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09/882,759	06/15/2001	Paul McAlinden	INTL-0600-US (P11741)	9776

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EXAMINER
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DANIEL JR, WILLIE J

ART UNIT	PAPER NUMBER
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2686

DATE MAILED: 08/03/2004

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/882,759

Applicant(s)

MCALINDEN, PAUL

Examiner

Willie J. Daniel, Jr.

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 31-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-18, 31-34, 36-38** are rejected under 35 U.S.C. 102(b) as being anticipated by **Fette et al. (US 6,052,600)** (hereinafter Fette).

Regarding **Claim 1**, Fette discloses a software programmable radio (200) which hereinafter reads on the claimed “portable device” (see col. 4, lines 54-67; Figs. 1 and 2), comprising:

a memory (206) which hereinafter reads on the claimed “storage unit” (see col. 4, lines 55-56; Fig. 2); and

a controller (204) which hereinafter reads the claimed “control unit” communicatively coupled to the storage unit (206) (see Fig. 2), the control unit (204) to determine whether configuration of the portable device (200) is desired (see col. 2, lines 34-45; Fig. 3), where the controller determines from information received from server, request configuration information in response to determining that configuration is desired (see col. 3, lines 31-34, col. 4, lines 25-34; col. 7, lines 42-48; Fig. 3), and receive the requested configuration information (see col. 4, lines 34-36), where the controller determines the need for new or updated software and request and receive the software.

Regarding **Claim 2**, Fette discloses the portable (200) device of claim 1, wherein the control unit (204) to further initialize the portable device (200) using at least a portion of the configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **Claim 3**, Fette discloses the portable device (200) of claim 1, wherein the control unit (204) to determine whether configuration is desired comprises the control unit (204) to detect an indication to upgrade the configuration of the portable device (200) (see col. 2, lines 34-45; col. 4, lines 25-36; col. 7, lines 42-49; Fig. 3), where the portable is able to determine if an upgrade is necessary from the updates requested and received.

Regarding **Claim 4**, Fette discloses the portable device (200) of claim 1, wherein the control unit (204) to establish a communication link (105) with a software distribution computer (SDC) (114) which hereinafter reads on the claimed “remote device” to receive the configuration information (see col. 3, lines 28-41; Fig. 1), where the portable device establishes a connection with the SDC via the base station to the server which is coupled to the SDC.

Regarding **Claim 5**, Fette discloses the portable device (200) of claim 1, wherein the control unit (204) to store the configuration information in a storage unit (206) (see col. 5, lines 33-41; Figs. 3 and 4), where the controller stores the information (e.g., software programs, waveforms, licenses) in the storage unit.

Regarding **Claim 6**, Fette discloses the portable device (200) of claim 1, wherein the control unit (204) to receive at least one of an operating system, protocol stack layer, and application layer of the portable device (200) (see col. 3, lines 40-57; col. 4, lines 25-36; col.

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6, lines 24-65; Figs. 3 and 4), where the portable device receives information for the operating software, communication protocol, or an application.

Regarding **Claim 7**, Fette discloses the portable device (200) of claim 1, wherein the control unit (204) to determine whether restoration of the portable device (200) to an operation state is desired (see col. 9, line 66 - col. 10, line 7; Figs. 3 and 4), where the controller determines if the software upgrade is complete and correct then enables the portable device for operation.

Regarding **Claim 8**, Fette discloses a method, comprising:

determining in a control unit (204) of a portable device (200) if configuration of the portable device (200) is desired (see col. 2, lines 34-45; col. 3, lines 31-41; col. 4, lines 25-36; col. 5, lines 18-21; col. 7, 42-49; Fig. 3), where the controller of the radio determines if new or updated information is available and request the information for configuring of the radio;

executing one or more instructions on the portable device (200) to receive configuration information in response to determining that configuration of the portable device (200) is desired (see col. 4, lines 25-44; 54-67; col. 7, lines 42-48; Figs. 1, 2, and 3), where the controller determines the need for new or updated software and request and receive the software; and

storing the received configuration information in the portable device (200) (see col. 5, lines 33-41; Figs. 3 and 4), where the controller stores the information (e.g., software programs, waveforms, licenses) in the storage unit.

Regarding **Claim 9**, Fette discloses the method of claim 8, further comprising initializing the portable device (200) with at least a portion of the received configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **Claim 10**, Fette discloses the method of claim 8, comprising establishing a wireless connection (105) with a remote device (114) (see col. 3, lines 28-41; Fig. 1), where the portable device establishes a connection with the SDC via the base station to the server which is coupled to the SDC,

transmitting a radio ID which hereinafter reads on the claimed “unique identifier” associated with the portable device (200) (see col. 8, lines 3-14), where a unique radio ID is associated with the portable device for identification of licenses and software, and

receiving configuration information from the remote device (114) associated with the unique identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for the portable device based on the associated radio ID.

Regarding **Claim 11**, Fette discloses the method of claim 8, wherein determining if configuration is desired comprises detecting an indication to reconfigure the portable device (see col. 2, lines 34-45; col. 4, lines 25-36; col. 7, lines 42-49), where the availability of new or updated software will indicate that the portable device will be reconfigured in accordance to the latest software.

Regarding **Claim 12**, Fette discloses the method of claim 8, wherein storing the received configuration information comprises storing at least one of an operating system,

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protocol stack, and application layer of the portable device (see col. 3, lines 40-57; col. 4, lines 25-36; col. 5 lines 33-41; col. 6, lines 24-65; Figs. 3 and 4), where the portable device receives and stores information for the operating software, communication protocol, or an application in the memory.

Regarding **Claim 13**, Fette discloses a memory (206) which reads on the claimed “article” comprising one or more machine-readable storage media containing instructions that if executed enable a portable device (200) (see col. 4, line 64 - col. 5, line 21) to:

determine whether configuration information for the portable device (200) is desired (see col. 3, lines 31-41; col. 4, lines 25-36; col. 7, 42-49; Fig. 3), where the radio checks to see if new or updated software (information) is available and request the information to configure the radio;

request the configuration information from a remote device (114) (see col. 4, lines 25-36; col. 7, lines 42-48; Figs. 3 and 4);

store the configuration information in response to requesting the configuration information (see col. 5, lines 11-41; Figs. 3 and 4); and

configure the portable device (200) using the configuration information (see col. 5, lines 11-21; col. 6, lines 62-65; Figs. 3 and 4), where the portable device is configured based on the information for configuring.

Regarding **Claim 14**, Fette discloses the article (206) of claim 13, wherein the instructions if executed enable the portable device (200) to request configuration information in response to detecting an indication to reconfigure the portable device (200) (see col. 2, lines 34-45; col. 4, lines 25-36; 54-67; col. 7, lines 42-48; Figs. 1, 2, and 3), where the

controller determines the need for new or updated software and request and receive the software to reconfigure the portable device in which the instructions would be inherent.

Regarding **Claim 15**, Fette discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to transmit a unique identifier associated with the portable device and receive the configuration information associated with the unique identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for the portable device based on the associated radio ID.

Regarding **Claim 16**, Fette discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to initialize the portable device (200) using at least a portion of the configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **Claim 17**, Fette discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to store information to upgrade the configuration of the portable device (200) (see col. 5, lines 33-41; Figs. 3 and 4), where the controller stores the information (e.g., software programs, waveforms, licenses) in the storage unit.

Regarding **Claim 18**, Fette discloses the article of claim 13, wherein the instructions if executed enable the portable device (200) to store at least one of an operating system, protocol stack, and application layer of the portable device (200) (see col. 3, lines 40-57; col. 4, lines 25-36; col. 5 lines 33-41; col. 6, lines 24-65; Figs. 3 and 4), where the portable device receives and stores information for the operating software, communication protocol, or an application in a memory.



Regarding **Claim 31**, Fette discloses of the portable device of claim 5, wherein the storage unit (206) comprises a first region to store the configuration information and a second region to store a program to request the configuration information, the second region comprising a protected region (see col. 5, lines 33-49,55-57; col. 6, line 21-23,62-65; Fig. 2 “ref. 206”), where the memory has separate portions for storing information in which the protected region would be inherent.

Regarding **Claim 32**, Fette discloses of the portable device of claim 1, wherein the control unit (204) to determine whether configuration is desired comprises the control unit (204) to detect a problem after an update (see col. 8, line 54-57; col. 8, line 64 - col. 9, line 19; Figs. 3 “ref. 314, 320”, 4 “ref. 322, 324”), where the radio tests the software by checking for problems.

Regarding **Claim 33**, Fette discloses the portable device of claim 1, wherein the control unit (204) to determine whether configuration is desired comprises the control unit (204) to receive an indication from a base station (106) to which the portable device (200) is coupled (see col. 2, lines 40-45; col. 3, lines 36-41; col. 4, lines 34-35,42-44; Fig. 3), where the radio receives the information (software) through the base station which verifies that a update or new software is available and checks licensing grants in which the indication would be inherent.

Regarding **Claim 34**, Fette discloses of the portable device of claim 1, wherein the control unit (204) to further verify with a user that the configuration is desired (see col. 4, lines 30-35; col. 5, lines 21-23; col. 7, lines 41-49; Fig. 4 “ref. 334”), where the user can accept or deny the software for configuring the radio.

Regarding **Claim 36**, Fette discloses the method of claim 8, further comprising prompting a user to verify that the configuration is desired (see col. 3, lines 31-50; col. 4, lines 30-35; col. 5, lines 21-23; col. 7, lines 41-49; Fig. 4 “ref. 334”), where the user can request new or updated software and accept or deny the software for configuring the radio in which the prompting would be inherent.

Regarding **Claim 37**, Fette discloses the method of claim 11, further comprising reconfiguring the portable device (200) to a previous operable state (see col. 9, lines 14-20; 50-51; Fig. 4 “ref. 324, 334, 336”), where the return of the radio to a previous operable state would be inherent when test for the update information (software) is unusable or when the user does not accept to software.

Regarding **Claim 38**, Fette discloses the method of claim 37, further comprising reconfiguring the portable device (200) after an unsuccessful upgrade attempt (see col. 8, lines 24-31; col. 9, lines 14-20; Figs. 3 and 4 “ref. 322, 334, 336”), where the radio is unable to generate the operation of the information (waveform) that has been received in which the reconfiguring would be inherent.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 35** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.**

(hereinafter Fette) (US 6,052,600) in view of Criss et al. (hereinafter Criss) (US 6,643,506).

Regarding **Claim 35**, Fette fails to disclose having the feature wherein detecting the indication comprises receiving the indication from a base station if the base station detects a problem with the portable device. However, the examiner maintains that the feature wherein detecting the indication comprises receiving the indication from a base station if the base station detects a problem with the portable device was well known in the art, as taught by Criss.

In the same field of endeavor, Criss discloses the feature wherein detecting the indication comprises receiving the indication from a base station (28) if the base station (28) detects a problem with the mobile terminal (58) which reads on the claimed “portable device” (see col. 6, lines 51-58; col. 7, lines 15-51; Figs. 1, 2, 12), where the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Criss to have the feature wherein detecting the indication comprises receiving the indication from a base station if the

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base station detects a problem with the portable device, in order for the host computer to request the operating system upgrade of the mobile terminal, as taught by Criss.

***Response to Amendment***

3. Regarding Claim 13, applicant inserted the limitation “determine whether configuration information for the portable device is desired” which was not part of the original claim (see original claim 13). The applicant amended claim 13 with the limitation of the claim as if the limitation was part of the original claim 13 (see Amendment A - claim 13). Examiner interprets the inserted limitation as if the applicant intended to add the limitation in the amended claim 13.

***Response to Arguments***

4. Applicant's arguments filed 11 May 2004 have been fully considered but they are not persuasive.
5. Regarding Applicant's argument on pg. 6, line 3-4 stating “disagrees that Fette discloses a control unit to determine whether configuration of a portable device is desired. Examiner respectfully disagrees with applicant. Fette discloses a software programmable radio (200) that has a controller (204) (see col. 2, lines 34-52; col. 4, line 54 - col. 5, line 24; col. 5, lines 52-60; Figs. 1-2), where the controller has the function of transmitting/receiving information and configuring reconfigurable resources. In addition, the portable radio transmits a request for information to configure the radio (see col. 3, lines 31-50; col. 4, lines 25-44; Figs. 3-4), in which the controller providing the request (desire) to configure from

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information received from the software distribution computer (114) would be inherent (see Fig. 1). The information being received by the radio is information (e.g., software programs, configuration files, software updates, license grants) that is used for configuring the software programmable radio.

6. Regarding applicant's arguments Claims 2-7, 31-34 on page 6, 4<sup>th</sup> and 5<sup>th</sup> paragraph, are rejected for the same reasons set forth for Claim 1.
7. Regarding applicant's arguments Claims 8-12, 34-38 on page 6, 4<sup>th</sup> and 5<sup>th</sup> paragraph, are rejected for the same reasons set forth for Claim 1.
8. Regarding applicant's arguments Claims 13-18 on page 6, 4<sup>th</sup> paragraph, are rejected for the same reasons set forth for Claim 1.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (703) 305-8636. The examiner can normally be reached on 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha D. Banks-Harold can be reached on (703) 305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJD,JR/wjd,jr  
16 July 2004



**CHARLES APPIAH**  
**PRIMARY EXAMINER**